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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,670	09/27/2001	David R. Dworkin	1875.0790000	8974
28393	7590	04/04/2006	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVE., N.W. WASHINGTON, DC 20005			SHEPARD, JUSTIN E	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/963,670	Applicant(s) DWORKIN ET AL.	
	Examiner Justin E. Shepard	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 3/9/2006 have been fully considered but they are not persuasive.

Page 7, first paragraph:

The applicant argues that Robles interleaves data into the null packets of an MPEG video data stream and does not replace null MPEG packets with DOCSIS data frames. The applicant refers to figure 5B in the specification to illustrate this point. Observing figures 16A and 16B in Robles the same idea found (except that the data is IP data, and not DOCSIS packets, which is taught by Steer). The examiner is interpreting the applicant's argument to be that the MPEG packets are not replaced with DOCSIS data frames. The claim limitations read on "interleaving" the data into MPEG data packets, which is what Robles discloses. Although if the applicant observes figures 16A and 16B again, the second block in the sequence shows a packet which is completely filled with null data and that is subsequently filled with IP data. This also meets the limitations presented by the claims, and therefore the rejection stands.

The remaining arguments are based on the idea that the rejection of independent claim 1 is not valid. As the examiner has shown that it is valid, the rejections of the dependent claims also stand.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robles in view of Steer.

Referring to claim 1, Robles discloses a system for interleaving MPEG video data with data comprising: a MPEG video source that produces a MPEG video data stream at a clock rate determined by said MPEG video source (column 15, lines 45-49; figure 15), wherein said MPEG video data stream is comprised of MPEG video data packets and null data packets (figure 16A); a media access control device that receives said MPEG video data stream, replaces each of said null data packets with a data frame to produce an interleaved MPEG data stream, and transmits said interleaved MPEG data stream (column 16, lines 14-21) at said clock rate determined by said MPEG video source (column 2, lines 43-47; Note: preventing the system from reducing the data rate is interpreted as being equivalent to transmitting at the same data rate as it is received).

Robles does not disclose a system where DOCSIS data is interleaved into an MPEG stream.

Steer discloses a system where DOCSIS data is interleaved into an MPEG stream (column 10, lines 2-4).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use the system disclosed by Robles to interleave DOCSIS data into an MPEG stream as taught by Steer. The motivation would have been that the data being interleaved into the MPEG data stream is IP data, which would be used in DOCSIS transmissions. Also adding the features taught by Steer would allow the system to interrupt certain packets that weren't time sensitive to allow for time sensitive packets to be sent first (Steer: column 2, lines 17-24).

Referring to claim 2, Robles discloses a system of claim 1, further comprising a downstream modulator that receives said interleaved MPEG data stream (column 17, lines 28-34) at said clock rate determined by said MPEG video source (column 2, lines 43-47).

Claims 4, 5, and 6 are rejected on the same grounds as claim 1.

Claim 7 is rejected on the same grounds as claim 2.

Claim 9 is rejected on the same grounds as claim 2.

Claim 10 is rejected on the same grounds as claim 2.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robles in view of Steer as applied to claims 1, 6, and 7 above, and further in view of Hiroshima.

Referring to claim 3, Robles in view of Steer does not disclose a system of claim 1, wherein said MPEG video source provides said MPEG video data stream at a clock rate less than 13.5 megabytes per second.

Hiroshima discloses a system of claim 1, wherein said MPEG video source provides said MPEG video data stream at a clock rate less than 13.5 megabytes per second (column 7, lines 40-44).

At the time of the invention it would have been obvious for one of ordinary skill in the art to transmit the data at 1.536 Mbps as taught by Hiroshima in the system disclosed by Robles and Steer. The motivation to do this would have been to lower the data transfer rate to allow the data to be transmitted on low bandwidth systems.

Claim 8 is rejected on the same grounds as claim 3.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS



VIVEK SRIVASTAVA
PRIMARY EXAMINER